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In the Supreme Court of the United States

_____ TERM, 1973

NO. 73-251

JOHN JAMES MEILY, JR.,

Petitioner,

vs.

AGRICULTURAL INVESTMENT CORPORATION, S.A., a Panamanian company, and FIRST NATIONAL INVESTMENT CORPORATION, S.A., a Luxembourg company, and AGRI INTERNATIONAL, S.A., a Panamanian company,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA DISTRICT COURT OF APPEAL, THIRD DISTRICT

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MIAMI REVIEW — 371-4853 — 377-3721

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in the
Supreme Court
of the
United States

_____ TERM, 1973

NO. _____

JOHN JAMES MEILY, JR.,

Petitioner,

vs.

AGRICULTURAL INVESTMENT CORPORATION, S.A., a Panamanian company, and FIRST NATIONAL INVESTMENT CORPORATION, S.A., a Luxembourg company, and AGRI INTERNATIONAL, S.A., a Panamanian company,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA DISTRICT COURT OF APPEAL, THIRD DISTRICT

Petitioner prays that a writ of certiorari issue to review the judgment herein of the District Court of Appeal, Third District, of the State of Florida, entered in the above case on January 25, 1972, petition for rehearing denied on March 8, 1972.

OPINIONS BELOW

The Order of the Circuit Court in and for Dade County, Florida, granting the Respondents' motion to dismiss on the theory of forum non conveniens is unreported and appears in Appendix A. The Order of the Circuit Court, denying Petitioner's motion for rehearing on the Order of dismissal is unreported and appears in Appendix B. The Order of the Circuit Court denying Petitioner's motion to vacate the Order of dismissal is unreported and appears in Appendix C. The Opinion of the Florida District Court of Appeals, Third District, affirming the foregoing orders of the Circuit Court, is reported at 258 So.2d 519 and appears in Appendix D. The Opinion of the Florida Supreme Court dismissing Petitioner's appeal for lack of jurisdiction is as yet unreported and appears in Appendix E. The opinion of the Florida Supreme Court discharging the Writ of Certiorari for lack of jurisdiction, with written dissent, is reported at 276 So.2d 161 and appears in Appendix F.

JURISDICTION

The judgment to be reviewed was made and entered by the Florida District Court of Appeal on January 25, 1972. An order denying a timely motion for rehearing was made and entered on March 8, 1972. The statutory provision believed to confer on this Court jurisdiction to review the judgment in question is 28 U.S.C.A. §1257(3).

CONSTITUTIONAL PROVISION INVOLVED

The constitutional provisions involved are the privileges and immunities and due process clauses of the Fourteenth Amendment of the United States Constitution:

"Section 1. . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . ."

QUESTIONS PRESENTED FOR REVIEW

Whether a state may, consistent with due process of law required by the Fourteenth Amendment of the United States Constitution, dismiss a Complaint filed by a United States citizen against foreign (non-U.S.) corporations, based on the doctrine of forum non conveniens, when such dismissal has the effect of relegating the U.S. citizen to the courts of foreign countries.

Whether a state may, consistent with the requirements of the privileges and immunities clause of the Fourteenth Amendment of the United States Constitution, dismiss a Complaint filed by a United States citizen against foreign (non-U.S.) corporations, based on the doctrine of forum non conveniens, when such dismissal has the effect of relegating the U.S. citizen to the courts of foreign countries.

Whether a state may, consistent with the doctrine of forum non conveniens, dismiss a Complaint filed by a United States citizen against foreign (non-U.S.) corporations, based on the doctrine of forum non conveniens, when such dismissal has the effect of relegating the U.S. citizen to the courts of foreign countries.

STATEMENT

Petitioner, John J. Meily, is a United States citizen who has resided outside of the United States for several years prior to the occurrence of the events and transactions which are the subject matter of this cause and was so at the time the Complaint was filed.

Respondent AGRICULTURAL INVESTMENT CORPORATION, S.A. (hereinafter "AICSA") is incorporated under the laws of the Republic of Panama and is the sole manager of Agri-Fund. Respondent FIRST NATIONAL INVESTMENT CORPORATION, S.A. (hereinafter "FNICSA") is a Luxembourg company. Respondent AGRI INTERNATIONAL, S.A. is incorporated under the laws of Panama and is the successor to FNICSA. These entities are the component parts of what is essentially an "offshore" mutual fund. Their relationship and functions and described more fully in their published brochure which is a part of the Record.

On April 7, 1970, Meily and Respondents (AICSA and FNICSA) entered into a written employment contract. The contract was signed by Meily, Edward Walterman (for FNICSA) and Edward J. Marcus (for AICSA). By this agreement AICSA and FNICSA employed Meily in the capacity of Executive Vice President of FNICSA and as Director of AICSA for a term of three consecutive years from May 1, 1970. Under the terms of the employment contract Meily's primary responsibility was to build and direct an active and effective sales force *the world over* for the sale of Agri Funds shares. The Complaint alleged that Meily fully performed his obligations under the contract.

The contract provided that either party could terminate it for "just cause," as defined therein, prior to April 30, 1973.

On or about January 10, 1971, the Respondent attempted to terminate the agreement. The Complaint alleged that this attempt was invalid for various reasons.

The attempted termination was accomplished via a telegram addressed to Meily, and delivered to him in London, wherein he was instructed to "*direct any communication in reference to this termination to the attention of Mr. Edward Walterman, 999 So. Bayshore Drive, Suite 501, Miami, Florida, U.S.A.*" [Emphasis added] The telegram also stated that Mr. Walterman would respond ". . . in his appointed capacity as general counsel representing Agricultural Investment, S.A. and First National Investment, S.A. or their affiliates and associates . . ."

On January 12, 1971, Meily, in compliance with the terms of the contract, terminated the contract for "just cause." The letter of termination, a copy of which was attached to the Complaint, was sent by registered mail to *Walterman* at the *Miami* address referred to in AICSA's telegram.

On June 14, 1971, Meily filed a Complaint in the Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida (Case No. 71-11509), wherein he sought to recover damages in excess of $120,000.00 and other relief as a result of the Respondent's breach of his employment contract.

Jurisdiction over AICSA was obtained through service on Mr. Edward Walterman, officer and general counsel of

the corporation and over the other Respondents by service on Alfred Landin, another Miami resident.

The Respondents responded by filing a Motion to Dismiss grounded, *inter alia*, on the doctrine of forum non conveniens. In support of their motion they filed an Affidavit executed by Edward Walterman, wherein he asserted essentially as follows (*as of the date the Affidavit was executed*): that AICSA had no office of any kind in Florida, had no agent or employees or representatives in the State of Florida, did not maintain a telephone, mailbox or mailing address in the State of Florida, and did not conduct any form of business in the State of Florida. In addition, Walterman asserted that the primary witnesses (in this case) are located either in London or other foreign countries or other States of the United States and that all of the pertinent events and transactions occurred outside Florida, with most of them occurring in either Germany or England.

Meily countered by presenting the Court with evidence and Affidavits which contradicted the assertions made in Walterman's Affidavit and established that during the duration of the employment contract, up to, including and following the termination of same, AICSA had its official and principal place of business located in Miami, Florida, at the Four Ambassadors Hotel.

On the question of the location of witnesses, Walterman and Landin, two of the four principal witnesses, undoubtedly reside in Miami, as they were served there. Marcus appears to have a residence in Miami. The last witness is Meily, who chose the forum.

The Respondent produced no affidavits or evidence which contradicted the foregoing facts except to the extent that the Walterman and Landin Affidavits may offer contradiction.

It is clear from the Record that the only place in the United States where Meily could obtain jurisdiction over the Appellees is in Miami, Florida.

In the face of this, the lower court nevertheless dismissed the Complaint, basing its action on the forum non conveniens doctrine. After the denial of his motion for rehearing and motion to vacate, Meily perfected an interlocutory appeal to the Florida District Court of Appeal, Third District (Case No. 71-1046), where the trial court's dismissal was affirmed, *Per Curiam*, with no opinion.

The Federal questions which Petitioner seeks to have reviewed were first raised in the District Court of Appeal.[1] Points IV and V of the Appellant's brief[2] filed in that Court argued the following issues:

> "POINT IV: THE LOWER COURT'S ORDER OF DISMISSAL SHOULD BE REVERSED BECAUSE APPELLEE FAILED TO SUSTAIN ITS BURDEN OF PROVING THAT THE SELECTED FORUM WAS MANIFESTLY INAPPROPRIATE UNDER THE APPLICABLE RULE OF LAW."

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[1]Under Rule 3.5, Florida Appellate Rules, assignments of error are only for the purpose of designating "identified judicial acts . . . , grounds for error need not be stated in the assignment." The grounds for error are initially stated in the Appellant's brief.

[2]Petitioner has requested the Clerk of the Florida District Court of Appeal to include that brief in the Record which will be furnished this Court in conjunction with the filing of this Petition.

"POINT V: THE LOWER COURT'S ORDER OF DISMISSAL SHOULD BE REVERSED BECAUSE A UNITED STATES COURT MAY NOT DISMISS A SUIT BROUGHT BY A U.S. CITIZEN WHEN IT HAS JURISDICTION OVER THE DEFENDANT IF SUCH DISMISSAL WILL LEAVE THE PLAINTIFF WITH RECOURSE ONLY TO FOREIGN (NON-U.S.) COURTS AND WILL VIOLATE HIS FEDERAL AND STATE CONSTITUTIONAL RIGHTS."

Under Point V Petitioner argued that the trial court's dismissal violated his rights as protected by Article 4, §2 of the United States Constitution (privileges and immunities clause) and under Amendment 14, §1 of the United States Constitution (privileges and immunities clause and due process clause), in addition to comparable provisions contained in the Florida Constitution.

Although the District Court of Appeal did not *expressly* pass on the constitutional issues (inasmuch as there was no written opinion), it could not have affirmed the decision of the trial court without resolving the constitutional issues against the Petitioner. *Meily v. Agricultural Investment Corporation, S.A.*, 258 So.2d 519 (Fla. App. 3d 1972). Meily's Petition for Rehearing was denied.

On April 16, 1972, Petitioner filed a Notice of Appeal to the Florida Supreme Court.

Also on April 16, 1972, Petitioner filed a Petition for Writ of Certiorari in the Florida Supreme Court.

On October 13, 1972, the Florida Supreme Court entered an Order granting a motion to dismiss the appeal for lack of jurisdiction.[3] ____ So.2d ____.

On November 14, 1972, the Supreme Court entered an Order Allowing Certiorari in which it tentatively accepted jurisdiction. In his brief on the merits filed pursuant to the Order Granting Certiorari, Meily argued, *inter alia*, the following points:

> "POINT III: THE DISMISSAL OF A COMPLAINT FILED BY A U.S. CITIZEN AGAINST FOREIGN (NON-U.S.) CORPORATIONS, BASED ON THE THEORY OF FORUM NON CONVENIENS, WHICH HAS THE EFFECT OF RELEGATING THE PLAINTIFF TO COURTS OF FOREIGN COUNTRIES, CONSTITUTES A VIOLATION OF RIGHTS SECURED THE PLAINTIFF BY THE PRIVILEGES AND IMMUNITIES CLAUSE OF U.S.C.A. CONST., AMEND. 14, A DENIAL OF DUE PROCESS OF LAW UNDER U.S.C.A. CONST., AMEND. 14 AND FLA. CONST. ART. I, §9 AND A DENIAL OF THE CITIZEN'S RIGHT TO ACCESS TO THIS STATE'S COURTS AS SECURED BY FLA. CONST. ART. I, §§ 9 AND 21."

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[3]Article V, §4 of the Florida Constitution gives the Florida Supreme Court *appellate* jurisdiction over decisions of District Courts of Appeal which, *inter alia*, initially construe a controlling provision of the State or Federal Constitution. This section has been applied in such a manner that a Per Curiam decision of a District Court, without a written opinion will not activate the Supreme Court's *appellate* jurisdiction. See, e.g., *Ogle v. Pepin*, 273 So.2d 391 (Fla. 1973).

"POINT III-A: THE DISMISSAL OF PLAINTIFF'S COMPLAINT BASED ON THE DOCTRINE OF FORUM NON CONVENIENS CONSTITUTES A DENIAL OF HIS RIGHTS UNDER THE PRIVILEGES AND IMMUNITIES CLAUSE OF THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION."

"POINT III-B: THE DISMISSAL OF A COMPLAINT FILED BY A U.S. CITIZEN BASED ON THE DOCTRINE OF FORUM NON CONVENIENS, WHERE THE DISMISSAL WILL RELEGATE THE PLAINTIFF TO FOREIGN COURTS, CONSTITUTES A DENIAL OF THE PLAINTIFF'S RIGHT TO ACCESS TO U.S. COURTS AS PROTECTED BY THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT, U.S.C.A. CONSTITUTION AND FLA. CONST. ART. I, §§ 9 AND 21."

After hearing oral argument the Florida Supreme Court, on March 28, 1973, entered a Per Curiam decision in which it concluded that it did not have jurisdiction because there was no jurisdictional conflict of decisions present.[4] The Writ was therefore discharged.

Although the majority decision of the Florida Supreme Court did little more than state there was no jurisdiction, Justice Ervin of that Court, in a written opinion dissented

[4]Article V, Section 4 of the Florida Constitution gives the state Supreme Court certiorari jurisdiction over District Court any decision which ". . . is in direct conflict with a decision of another district court of appeal or of the Supreme Court on the same point of law . . ."

from the majority view on the jurisdictional issue and went on to express his views on the merits of the appeal. One part of his statement offers a compelling argument for this Court to issue a writ of certiorari:

> "We should be loath to deny our nationals access to the nation's state or federal courts under the circumstances appearing here. Clear abuse appears here in denying an American citizen access to our state courts reaching constitutional proportions and creating conflict in decisions. Long-arm statutes and other modern statutes analogously point the way to concluding American citizens should not be denied the right to litigate claims in appropriate American courts where the parties sued have established venue status by having offices or transacting business within their jurisdiction. The result here is a relic of bygone day."

On April 11, 1973, Meily filed a Petition for Rehearing, which was denied by an Order entered on May 7, 1973.

REASONS FOR GRANTING THE WRIT

1. This case presents squarely the issue of the scope of the right of a United States citizen to access to his own country's courts under the Due Process Clause of the Fourteenth Amendment of the United States Constitution. More specifically, this case presents the issue of whether any United States Court may, consistent with Due Process, dismiss a complaint filed by a U.S. citizen, under the doctrine of forum non conveniens, when to do so will relegate that citizen to the courts of a foreign country.

2. The issue is a timely one which assumes particular significance in view of the continuously increasing international mobility of citizens of this country and the increasing social, economic and commercial interaction between citizens of this country and citizens of foreign countries in the international area. As a consequence of this interaction the issue has arisen with increasing frequency as time goes on. See, e.g., cases cited in *Anno* (Forum Non Conveniens) 10 A.L.R. Fed 352 §8[b] ("American nationality of party") and §17 ("Actions by American citizens or corporations against aliens or foreign corporations").

3. This Court has held that Due Process encompasses a right of access to the courts. *Boddie v. Connecticut*, 401 U.S. 371, 28 L.Ed.2d 113 (1971). This Court carefully refrained from holding that access for all individuals to the courts is a right that is guaranteed under all circumstances by the Due Process Clause of the Fourteenth Amendment. 401 U.S. at p. 382. However, it demonstrated that the right is a viable one. The Court below rejected Petitioner's argument that the Due Process right to access protects a U.S. citizen from being dismissed under facts such as those presented in the instant case.

4. This Court has expressly recognized that the application of the forum non conveniens doctrine to suits brought by American citizens against foreign defendants brings ". . . into force considerations very different from those in suits between foreigners." *Swift & Co. Packers v. Compania Colombiana*, 399 U.S. 684, 94 L.Ed. 1206, 1215 (1950). Of special significance in that case was a question which this Court posed, in the context of forum non conveniens, and left unanswered:

> "We need not now decide the abstract question whether United States admiralty courts may decline jurisdiction over libels brought by United States citizens." 94 L.Ed. at p. 1215.

The foregoing is a recognition that U.S. citizens occupy a special status in the courts by virtue of that citizenship. Petitioner respectfully submits that this special status is more than mere status; it is in fact a constitutionally protected right of access to this country's courts. The instant case directly presents the question of whether or not the Due Process Clause does indeed protect Petitioner against being forced out of U.S. courts.

5. Several Federal Courts have implied that there does exist an absolute right in a U.S. citizen, suing in his own right, to remain in the courts of his own country under the circumstances of the instant case. Thus, in *U.S. Merchants & Shippers' Ins. Co. v. A/A Den Norske A. OGA, Line*, 65 F.2d 392 (2nd Cir. 1933), Judge Learned Hand made the following statement:

> "But the libellant is a citizen and asserts its absolute privilege of resort to its own courts, independently of any inconvenience to the respondent. How far such inconvenience can be recognized, depends upon the local procedure which at times does indeed protect a non-resident from local suit. Courts are maintained to give redress primarily to their own citizens; it is enough if these conform to the conditions set upon their jurisdiction. All this is entirely true, and would be conclusive, if the libellant sues in its own right. The question is whether it is equally true, when it sues as subrogate."

The foregoing excerpt assumes the existence, in a U.S. citizen, of an absolute right of access to his country's courts. Such an interpretation has been placed on the case by at least one Court. *Stewart v. Godoy-Sayan*, 153 F.Supp. 544 (D.C. N.Y. 1957). Petitioner submits that this right has a constitutional basis and that that basis is the Due Process Clause.

The Fifth Circuit has also posed the question and left it unanswered:

> ". . . we have found no cases in which a resident citizen suing in his own right was dispatched to a foreign court. It strikes us as being inconsistent with the very purpose and function of the federal courts to hold that one may decline to hear a case and thereby in effect decree that a citizen must go to a foreign country to seek redress of an alleged wrong. Nevertheless, because we are of the belief that it is unnecessary to do so here, we are not prepared in *any* such case to decline jurisdiction. Experience has taught that such a holding may prove unsound in extreme cases; and the Supreme Court in the *Swift* case, *supra*, declined to pass upon a similar point. We leave that question open." *Burt v. Isthmus Dev. Co.*, 218 F.2d 353 (5th Cir. 1955), cert. den. 349 U.S. 922, 99 L.Ed. 1254 (1955).

The issue which the instant case presents for determination is precisely the issue which this Court and the Fifth Circuit have intentionally left unanswered because the decision could be reached on other, non-constitutional grounds. Petitioner's case does not offer other grounds for decision; the question is squarely presented as a matter of Due Process.

6. There are numerous cases from the Federal courts, other than the Supreme Court, and state courts which recognize that significantly different considerations come into play under facts such as exist in the instant case. The rule which has generally been applied where application of the forum non conveniens doctrine will relegate a U.S. citizen to the courts of foreign countries is *manifest injustice*, rather than mere inconvenience, to the foreign defendant.[5] The decision below stands alone among the reported cases in this country as the first and only case in which a United States citizen suing in his own right has, through application of the doctrine of forum non conveniens, been dismissed from the courts of his own country and thereby been relegated to the courts of foreign countries.

7. Assuming the issue is a constitutional one as Petitioner contends, then the existence of the decision of the Florida courts on the question stands out as a perfect example of the pitfalls inherent in not having a definitive statement on the subject from the highest court in the land. Inconsistent decisions, reflecting agreement or disagreement with the constitutional proportions of the issue, will be inevitable. Although Federal courts have articulated a

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[5]Perhaps the most incisive opinion is that in *Burt v. Isthmus Dev. Co.*, 218 F.2d 353 (5th Cir. 1955):

> "We do, however, express the view that courts should require positive evidence of unusually extreme circumstances, and should be thoroughly convinced that material injustice is manifest before exercising any such discretion to deny a citizen access to the courts of this country."

Other cases expressing essentially the same view include: *The Saudades*, 67 F.Supp. 820 (E.D. Penn. 1946); *Latimer v. S/A Industria Reunidas F. Matarazzo*, 91 F.Supp. 469 (S.D. N.Y. 1950); *Lesser v. Chevalier*, 138 F.Supp. 330 (S.D. N.Y. 1956); *Hertz System, Inc. v. McIlloree*, 168 N.E.2d 468 (Ill. App. 1960); *Hoffman v. Governman*, 420 F.2d 423 (3rd Cir. 1969); *Kolber v. Holyoke Shares, Inc.*, 213 A.2d 444 (Del. 1965); *Bagarozy v. Meneghina*, 131 N.E.2d 792 (Ill. App. 1955); cf., *In Re Unterweser Reederei, GMBH*, 428 F.2d 888 (5th Cir. 1970).

rule of "manifest injustice" in situations such as ours,[6] they have in fact administered a rule of prohibition—against forcing U.S. citizens to the courts of foreign countries. So long as that rule prevails the states will be free to accept or reject the proposition—since it is merely a matter of policy—with obvious, inevitable and adverse consequences, in the forum of conflicting decisions.

8. Petitioner is a citizen of the United States and consequently assumes burdens (taxes) and responsibilities (voting) which attach to that station. The fact that he may live outside the boundaries of this country does not eliminate these obligations. As a citizen Petitioner should be entitled to enjoy the most basic rights, or benefits, which attach to citizenship under the Constitution. He would certainly be entitled to all the due process rights in a criminal proceeding. Surely he should be entitled to the other protections afforded by Due Process—including access to courts. A citizen's right to access to the courts of his own country has been recognized to exist by the courts—both State and Federal. This right, in other contexts, such as that presented in *Boddie v. Connecticut*, has been deemed to be a matter of Due Process. Although the citizen's right to access to the courts, as presented in cases reflecting our facts, has not been explicitly described as being a due process matter, that is the only logical source of such a right. Surely it is not solely a matter of "public policy" without reference to the basic document which establishes the parameters of such policy. The question is indeed a constitutional one and the instant case provides this court with an opportunity to define the nature and scope of a citizen's right to access.

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[6]See, e.g. *Burt v. Isthmus Dev. Co.*, 218 F.2d 353 (5th Cir. 1955).

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ William E. Sadowski of
HELLIWELL, MELROSE
& DeWOLF
Attorneys for Petitioner
600 Brickell Avenue
Miami, Florida 33131

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished, by mail, to Frates, Floyd, Pearson, Stewart, Proenza & Richman, Attorneys for Respondents, 12th Floor, Concord Building, Miami, Florida, this 3rd day of August, 1973.

/s/ William E. Sadowski

Attorney

APPENDIX

APPENDIX A

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA
NO. 71-11509
JOHN JAMES MEILY, JR.,

Plaintiff,

vs.

AGRICULTURAL INVESTMENT
CORPORATION, S.A., et al.,

Defendants.

ORDER

THIS CAUSE came on to be heard upon the Motions of the Defendants, AGRICULTURAL INVESTMENT CORPORATION, S.A. and AGRI INTERNATIONAL, S.A., to Dismiss this cause on a theory of forum non-convenience in that Florida is not the proper or convenient forum for the trial of this cause and the Court having heard argument of counsel and being fully advised in the premises, it is

ORDERED AND ADJUDGED that the Motions of the Defendants, AGRICULTURAL INVESTMENT CORPORATION, S.A. and AGRI INTERNATIONAL, S.A., be and the same is hereby granted.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida this 4 day of August, 1971.

J. GWYNN PARKER

CIRCUIT COURT JUDGE

APPENDIX B

[TITLE OMITTED]

ORDER

THIS CAUSE came on to be heard upon the Motion of the Plaintiff, JOHN JAMES MEILY, JR., for a rehearing as to this Court's Order of Dismissal of this case based on a theory of forum non conveniens, and the Court having heard argument of counsel and being otherwise fully advised in the premises, it is hereby

ORDERED and ADJUDGED that the Plaintiff's Motion be and the same is hereby denied and the prior Order of Dismissal be and the same is hereby reaffirmed.

DONE AND ORDERED at Miami, Dade County, Florida, this 19 day of August, 1971.

J. GWYNN PARKER

CIRCUIT JUDGE

APPENDIX C

[TITLE OMITTED]

ORDER

THIS CAUSE coming on to be heard of the Plaintiff's Motion to Vacate Order of Dismissal pursuant to Rule 1.540(b), Fla. R. Civ. P., and the Court having heard argument of counsel and having considered all the evidence and Affidavits filed in conjunction with Plaintiff's Motion to Vacate and the evidence and Affidavits heretofore submitted by the parties in conjunction with earlier motions directed to the question of forum non conveniens, and being otherwise fully advised of the premises, it is

ORDERED AND ADJUDGED that Plaintiff's Motion to Vacate this Courts' prior Order dismissing this case on the theory of forum non conveniens be and the same is hereby denied.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 9 day of September, 1971.

J. GWYNN PARKER

CIRCUIT JUDGE

APPENDIX D

[TITLE OMITTED]

Opinion filed January 25, 1972.

An Interlocutory Appeal from the Circuit Court for Dade County, J. Gwynn Parker, Judge.

Helliwell, Melrose & DeWolf and William E. Sadowski, for appellant.

Frates, Floyd, Pearson & Stewart and Alan J. Greer, for appellees.

Before SWANN, C.J., and CHARLES CARROLL and HENDRY, JJ.

PER CURIAM.
Affirmed.

APPENDIX E

[TITLE OMITTED]

Respondents' Motion to Dismiss Appeal is granted and it is ordered that the appeal be and the same is hereby dismissed.

ROBERTS, C.J., CARLTON, ADKINS and DEKLE, JJ., Concur
ERVIN and BOYD, JJ., Dissent

cc: Hon. Wm. P. Carter, Clerk
Hon. E. B. Leatherman, Clerk
Messrs. Helliwell, Melrose & DeWolf
Messrs. Frates, Floyd, Pearson & Stewart

A True Copy
TEST:

Sid J. White
Clerk Supreme Court.

/s/ Dave Lang, Jr.
Chief Deputy Clerk
Supreme Court of Florida

APPENDIX F

Opinion filed March 28, 1973

Writ of Certiorari to the District Court of Appeal, Third District

William E. Sadowski of Helliwell, Melrose & DeWolf, for Petitioner

Ray H. Pearson, Alan G. Greer and Bertha Claire Lee of Frates, Floyd, Pearson & Stewart, for Respondents

PER CURIAM.

By petition for writ of certiorari, we are requested to review a decision of the District Court of Appeal, Third District, which allegedly conflicts with a prior decision of the District Court of Appeal, First District.

Our initial examination of the petition and record suggested a possible jurisdictional conflict. We issued the writ and have heard arguments on both jurisdiction and the merits.

After a thorough consideration of the petition, record, briefs and argument, we are now led to conclude that no jurisdictional conflict of decisions is present. Finding, therefore, that the writ was improvidently issued, it is hereby discharged.

It is so ordered.

CARLTON, C.J., ROBERTS, McCAIN and DEKLE, JJ., Concur

ERVIN, J., Dissent with Opinion
ERVIN, J., dissenting:

Petitioner, John J. Meily, Jr., a United States citizen, entered into an employment contract with respondents Agricultural Investment Corporation, S.A. (hereinafter "AICSA"), a Panamanian corporation, and First National Investment Corporation, S.A. (hereinafter "FNICSA"), a Luxembourg company. Respondent Agri International, S.A., is incorporated under the laws of Panama and is the successor to FNICSA. Under the terms of the agreement, respondents employed petitioner as a vice-president of FNICSA and as a director of AICSA for a three-year period beginning May 1, 1970. Petitioner's duties included the organizing and directing of a sales force "throughout the world" for this mutual fund organization.

In January 1971 the respondents attempted to terminate this agreement via a telegram to petitioner's London, England, address. He was instructed to "direct any communication in reference to this termination to the attention of Mr. Edward Walterman, 999 So. Bayshore Drive, Suite 501, Miami, Florida, U.S.A., and he will respond in his appointed capacity as general counsel representing [respondents] . . . ." Thereupon petitioner wrote to Walterman regarding his dismissal and on June 14, 1971 filed a complaint in the circuit court for Dade County.

Respondents filed a motion to dismiss the complaint and argued the doctrine of forum non conveniens as one of the grounds for that motion. They submitted affidavits

in support of their position. Petitioner responded by citing the trial court to the Miami address where the petitioner was directed to forward correspondence concerning the termination, and which appeared on the letterhead of AICSA stationery. In addition, affidavits were also submitted by former employees or agents of AICSA which depicted Miami, Florida, as that firm's principal place of business.

In an order dated August 4, 1971, the Circuit Court dismissed the cause on the theory of forum non conveniens. An interlocutory appeal to the Third District Court of Appeal resulted in a per curiam affirmance without opinion. A petition for writ of certiorari was filed with this Court pursuant to the provisions of Article V, Section 4, Florida Constitution, and Rule 4.5c of the Florida Appellate Rules. The record proper reflects the basis for conflict jurisdiction as hereinafter discussed. We should accept jurisdiction because of conflict with the First District Court of Appeal decision in Adams v. Seaboard Coast Line Railroad Company, 224 So.2d 797 (Fla.App. 1969).

In Adams, an action was brought by a resident of Georgia in a Florida circuit court against a Virginia corporation which had its principal place of business in Florida. The cause of action accrued in Georgia. The circuit court dismissed the action on the grounds that the situs of the accident was in Georgia and that all of the witnesses were non-forum residents of that state and not amenable to compulsory process of the court. In a detailed and comprehensive opinion concerning the doctrine of forum non conviens, the District Court of Appeal reversed that decision. In summarizing their discussion, the court stated:

> "In the ultimate, however, it is seen that the application of the doctrine of forum non conveniens is restricted to the limited category of cases in which both parties to the action are non-residents, and the cause of action sued upon arose in a jurisdiction outside of Florida. It is only after these two factors emerge and coalesce that the trial court is authorized to proceed to a determination of whether the criteria necessary to bring into play the doctrine of forum non conveniens have been met. It should be borne in mind that we are not here dealing with a mere procedural mechanic by which an action is transferred from one forum to another without prejudice to either of the parties. We are here dealing with a final judgment dismissing a complaint which has been filed in a proper forum in accordance with the venue statutes of this state, the effect of which might well be to either destroy the cause of action or greatly prejudice the rights of the plaintiff. Under these circumstancies a trial court is required to exercise a much higher standard of discretion in passing upon such a motion to dismiss the action than is otherwise required in the disposition of procedural motions having a less drastic effect upon the substantive rights of the parties." Supra, at 801. (Emphasis supplied.)

The District Court stated that although the defendant had not received its corporate charter from this state, it should be treated as a Florida citizen because it has its principal place of business here.

Although the "record proper," as that term is used in Foley v. Weaver Drug, 177 So.2d 221 (Fla. 1965), consists of little more than a short order dismissal by the circuit court and an affirmance without opinion by the district court, for reasons which I have expressed in Gibson v. Maloney, 231 So.2d 823 (Fla. 1970), I find conflict in the record of this cause with the *Adams* decision. As in the *Adams* case, petitioner here is not a resident of Florida, and while the respondents were not chartered in this state, they have a principal office and have carried on extensive business activities here, as evidenced by Miami letterheads on their stationery and the addresses there of members of the boards of directors and petitioner was expressly directed by respondents to correspond with their Miami attorney regarding his dismissal. While I realize that application of the doctrine of forum non conveniens is within the judicial discretion of the trial court, it should not be employed unless the inconvenience and expense placed upon a defendant "clearly and substantially outweighs the privilege of a plaintiff to choose the forum in which the suit is filed." 8 Fla. Jur. Supp. Courts § 57. This does not appear to be a case where another forum would better serve the convenience of the parties and the ends of justice. See Gulf Oil Corporation v. Gilbert, 330 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 1055 (1947), holding American citizens should not be denied the use of Florida courts in suing corporate entities whose interests, although diffused throughout the world, are nevertheless firmly entrenched within our borders.

We should be loath to deny our nationals access to the nation's state or federal courts under the circumstances appearing here. Clear abuse appears here in denying an American citizen access to our state courts reaching con-

stitutional proportions and creating conflict in decisions. Long-arm statutes and other modern statutes analogously point the way to concluding American citizens should not be denied the right to litigate claims in appropriate American courts where the parties sued have established venue status by having offices or transacting business within their jurisdictions. The result here is a relic of a bygone day.

The decision of the District Court of Appeal should be quashed and the cause remanded to the trial court so that the petitioner may have his day in court and the merits of his suit decided.

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